

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Ava A. King and Kenneth W. King, a
married couple,

Plaintiffs,

vs.

United States of America,
Department of Education; Arne
Duncan, Secretary of Education;
United States of America, Internal
Revenue Service; John Koskinen,
Commissioner of the Internal
Revenue Service; FMS Investment
Corp., a Maryland corporation,

Defendants

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF AND RECOVERY OF
WRONGFULLY OFFSET TAX REFUND**

For their complaint against the United States of America and FMS Investment Corp., Ava A. King and Kenneth W. King allege as follows:

PARTIES

1.1 Ava A. King and Kenneth W. King ("the Kings") are a married couple, residents of King County, Washington and the Western District of Washington. Ava A. King is a Canadian citizen, and a permanent resident of the United States.

1.2 The Department of Education ("DOE") is an agency of the United States of

1 America. Arne Duncan is the Secretary of Education.

2 1.3 The Internal Revenue Service ("IRS") is an agency of the United States of
3 America. John Koskinen is the Commissioner of Internal Revenue.
4

5 1.4 FMS Investment Corp. ("FMS") is a corporation created under the laws of the
6 state of Maryland, doing business in the state of Washington and in the Western District
7 of Washington.
8

9 JURISDICTION

10 2.1 The District Court has jurisdiction to hear and determine the claims asserted
11 herein pursuant to 28 U.S.C. §1346(a)(2).
12

13 2.2 Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
14 §1402.
15

16 FACTS

17 3.1 Some time prior to 1981, an individual named Ava B. King (not the plaintiff in
18 this action) obtained a National Direct Student Loan from North Seattle Community
19 College. The note was subsequently assigned to DOE.
20

21 3.2 In approximately 1988, this Ava B. King obtained three Federal Family
22 Education Loans to attend ITT Technical Institute. The loans identified in this
23 paragraph and the preceding paragraph (referred to herein as the "Student Loans")
24 bear the debt numbers xxxxx1187, xxxxx1190, xxxxx1194, xxxxx1198; and are grouped
25 under account number xxxxxx6547.
26

27 3.3 DOE employs FMS to collect the Student Loans.
28

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1 3.4 DOE retains authority to direct FMS's collection activity, including the
2 authority to decide whether Ava A. King, plaintiff herein, should or should not be the
3 target of collection activity.
4

5 3.5 As of June 25, 2015, DOE claims that the aggregate principal balance of the
6 Student Loans is \$6914.72, accrued and unpaid interest is \$9735.84, and the total amount
7 owing is \$20,703.32.
8

9 3.6 Sometime in the 1990s, DOE decided that the plaintiff herein, Ava A. King,
10 was the borrower on the Student Loans. As a result, DOE has directed its collection
11 agencies to collect the student loans from Ava A. King.
12

13 3.7 Pursuant to DOE's instructions, its collection agency threatened to or
14 attempted to garnish Ava A. King's wages.
15

16 3.8 Pursuant to DOE's instructions, on or about May 20, 2015, IRS offset the
17 Kings' 2014 federal income tax refund in the amount of \$3883.00.
18

19 3.9 If Kenneth W. King applies for Social Security benefits to which he is entitled,
20 the United States Social Security Administration will, pursuant to DOE's instructions,
21 offset such benefits against the Student Loans.
22

23 3.10 The plaintiff, Ava A. King is not the same person as Ava B. King, the actual
24 borrower on the Student Loans.
25

26 3.11 The plaintiff, Ava A. King, and the actual borrower, Ava B. King, have
27 different middle names, different dates of birth, different Social Security numbers,
28 different residence addresses, and different nationalities.

1 them in a) attempting to demonstrate to DOE that Ava A. King is not the borrower on
2 the Student Loans, and b) prosecuting this action, pursuant to the attorney fee clauses in
3 the various promissory notes. *Yuan v. Chow*, 96 Wash.App. 909 (Div. 2, 1999).
4

5 **PRAYER FOR RELIEF**

6 Wherefore, Ava A. King and Kenneth W. King pray for relief as follows:

7 5.1 For judgment against the United States in the amount of \$3883.00, plus
8 interest at 12% per annum from May 20, 2015 until paid.
9

10 5.2 For judgment against the United States in the amount of the attorney fees
11 and costs incurred by the Kings in communicating with the Department of Education
12 and FMS, and in prosecuting this action, in an amount to be determined by the Court.
13

14 5.3 For a judgment declaring that Ava A. King and Kenneth W. King are not
15 liable on the Student Loans.
16

17 5.4 For a permanent injunction barring the Department of Education, its agents,
18 or any other agency or instrumentality of the United States from seeking to collect the
19 Student Loans from Ava A. King or Kenneth W. King.
20

21 5.5 For leave to amend this complaint to conform to the proof at trial.

22 5.6 For such other and further relief as the Court deems just.

23 Dated: August 31, 2015
24

25 DONALD A BAILEY

26 /s/ Donald A Bailey

27 WSB#12289

28 Attorney for Plaintiffs

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